

REMARKS

Claims 1-17, 37-49, and 63-81 constitute the pending claims in the present application, prior to Amendment. Applicants cancel, without prejudice, claims 6 and 7.

Applicants note with appreciation that the Examiner has indicated that claims 37-49 and 63-81 are in condition for allowance.

Applicants further note that the Examiner has indicated that claims 6, 7, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if re-written in independent form including all of the limitations of the base claim and any intervening claims.

Claim 1 (and claims dependent thereon) has been amended to incorporate the features of previously pending claim 6. As such, claim 1 now reflects claim 6 re-written in independent form, and claim 6 has been cancelled to avoid redundancy.

Applicants add new claims 82-86. Support for the subject matter of the newly added claims is found throughout the application. Specifically, claim 82 reflects claim 7 re-written in independent form, and claim 7 has been cancelled to avoid redundancy. Applicants have additionally added new claims 87-92. Claim 87 combines the features of claim 63 and claim 7, re-written in independent form.

Applicants respectfully request reconsideration in view of the following remarks. Issues raised by the Examiner will be addressed below in the order they appear in the Office Action.

Information Disclosure Statement

Applicants note that an Information Disclosure Statement was filed on October 4, 2007, prior to the mailing date of the instant Office Action. Consideration of Applicants' Information Disclosure Statement is requested. To facilitate consideration of these previously submitted references, Applicants have included the references cited October 4, 2007 on a Supplemental Information Disclosure Statement filed concurrently with the instant response. The accompanying Supplemental Information Disclosure Statement also cites additional references and makes of record art cited in an Office Action dated October 9, 2007 in co-pending application serial number 10/409,272.

Double Patenting

Claims 1, 7, 9-11, 15-17, 37, 40-42, 47, 48, 50, 53-55, 60, and 61 were previously rejected on the grounds of obviousness-type double patenting as allegedly unpatentable over claims 1, 2, 4, 5, 7, 8, 13, 14, 16-18, and 21 of U.S. Patent No. 6,478,754. Applicants traverse. Nevertheless, to expedite prosecution, Applicants enclose herewith a terminal disclaimer, thereby obviating the rejection.

Claims 1, 9-11, 15-17, 37, 40-42, 47, 48, 50, 53-55, 60, and 61 were previously rejected on the grounds of obviousness-type double patent as allegedly unpatentable over claims 1, 2-5, 7-10, 12, 13, 16, 17, and 20 of U.S. Patent No. 6,569,099. Applicants traverse. Nevertheless, to expedite prosecution, Applicants enclose herewith a terminal disclaimer, thereby obviating the rejection.

Claims 1, 9-11, 15-17, 37, 40-42, 47, 48, 50, 53-55, 60, and 61 were previously rejected on the grounds of obviousness-type double patenting as allegedly unpatentable over claims 1, 2, 4, 5, 7, 8, 13, 14, 16-18, and 21 of U.S. Patent No. 6,663,554. Applicants traverse. Nevertheless, to expedite prosecution, Applicants enclose herewith a terminal disclaimer, thereby obviating the rejection.

The filing of the above referenced terminal disclaimers is not in acquiescence to these rejections, but solely to expedite prosecution.

35 U.S.C. § 102

Claims 1-5, 8-11, 15, and 16 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Gerasimenk (SU 1106485; herein referred to as "Gerasimenk"). Applicants traverse this rejection and contend that the rejection is moot in light of the amended claims.

The Gerasimenk reference was discussed in detail in Applicants' previous response. The Examiner has continued to apply Gerasimenk to a subset of the pending claims. Applicants maintain the arguments of record and contend that claims 1-5, 8-11, 15, and 16, prior to Amendment, are novel in view of Gerasimenk.

Nevertheless, to expedite prosecution, Applicants have amended the claims, as suggested by the Examiner. Specifically, Applicants have amended claim 1 (and claims dependent therefrom) to incorporate the features of claim 6, thus pointing out that the ultrasonic energy is delivered simultaneously with delivery of a liquid spray to the tissue. Applicants note that the Examiner indicated that claim 6 was objected to as dependent on a rejected base claim but would

be allowable if re-written in independent form. Claim 1, as amended, corresponds to claim 6 re-written in independent form. Gerasimenk does not teach each and every limitation of Claim 1, as amended. As such, Gerasimenk does not anticipate the claimed invention.

Applicants' amendment is not in acquiescence to the rejection. Applicants reserve the right to prosecute claims of similar or differing scope. Applicants' amendment is believed to obviate the rejection, and reconsideration and withdrawal of the rejection are requested.

35 U.S.C. § 103

Claims 12, 13, and 17 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Gerasimenk in view of Duarte (U.S. Patent No. 6,273,864; herein referred to as "Duarte"). Applicants traverse this rejection and contend that the rejection is moot in light of the amended claims.

The Gerasimenk and Duarte references were discussed in detail in Applicants' previous response. The Examiner has continued to apply these references to a subset of the pending claims. Applicants maintain the arguments of record and contend that claims 12, 13, and 17, prior to Amendment, are patentable in view of the combined teachings of Gerasimenk and Duarte.

Nevertheless, to expedite prosecution and as described above, Applicants have amended the claims, as suggested by the Examiner. Specifically, Applicants have amended claim 1 (and claims dependent therefrom) to incorporate the features of claim 6, thus pointing out that the ultrasonic energy is delivered simultaneously with delivery of a liquid spray to the tissue. Applicants note that the Examiner indicated that claim 6 was objected to as dependent on a rejected base claim but would be allowable if re-written in independent form. Claim 1, as amended, corresponds to claim 6 re-written in independent form. Claims 12, 13, and 17 depend from claim 1. The combined teachings of Gerasimenk and Duarte do not undermine the patentability of claims 12, 13, and 17.

Applicants' amendment is not in acquiescence to the rejection. Applicants reserve the right to prosecute claims of similar or differing scope. Applicants' amendment is believed to obviate the rejection, and reconsideration and withdrawal of the rejection are requested.

Allowable Subject Matter

Applicants note with appreciation that the Examiner has indicated that claims 37-49 and 63-81 are in condition for allowance. Applicants further note with appreciation that the Examiner has indicated that claims 6, 7, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the pending claims are in condition for allowance. Early and favorable reconsideration is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at 617-951-7000.

Please charge any deficiency or credit any overpayment in the fees that may be due in this matter to **Deposit Account No. 18-1945**, from which the undersigned is authorized to draw, under **Order No. 103514-0011-103**.

Respectfully Submitted,



Melissa S. Rones
Registration No.: 54,408
Ropes & Gray LLP
One International Place
Boston, MA 02110
Phone: 617-951-7000
Fax: 617-951-7050

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